

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:09-CR-122-H
No. 7:10-CV-140-H

DERRICK DESHAWN NIXON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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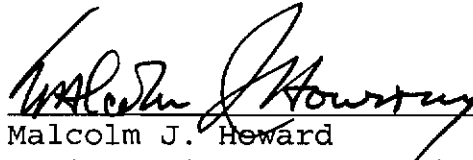
ORDER

This matter is before the court on petitioner's motion to vacate pursuant to 28 U.S.C. § 2255. A review of the record reveals that this matter is currently pending on direct appeal to the Fourth Circuit Court of Appeals. United States v. Nixon, No. 10-4494 (4th Cir. filed May 4, 2010).

While "there is no jurisdictional bar to the District Court's entertaining a Section 2255 motion during the pendency of a direct appeal . . . the orderly administration of criminal law precludes considering such a motion absent extraordinary circumstances." Rule 5 of the Rules Governing § 2255 Proceedings, Advisory Committee Note; See also United States v. Cook, 997 F.2d 1312, 1319 (10th Cir. 1993) ("Absent extraordinary circumstances, the orderly administration of criminal justice

precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending.") Finding that no extraordinary circumstances exist, and for purposes of judicial economy, this matter is hereby DISMISSED WITHOUT PREJUDICE. Petitioner may refile his § 2255 motion within the proper limitations period after the conclusion of his direct appeal and certiorari petition, if any.

This 30th day of November 2010.



Malcolm J. Heward
Senior United States District Judge

At Greenville, NC
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